New Link LTD, Inn Site, Inc., and Cherlayne, Inc., single employer, and Detroit Center for Care, LLC, joint employer *and* Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME) AFL–CIO. Case 07–CA–053651

April 6, 2012

DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND FLYNN

The Acting General Counsel seeks default judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and first and second amended charges filed by Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL–CIO, the Union, on April 27, 28, and June 9, 2011, respectively, the Acting General Counsel issued the original complaint on July 29, 2011, against New Link Ltd, Inn Site, Inc., Cherlayne, Inc., and Detroit Center for Care, LLC, the Respondents, alleging that they violated Section 8(a)(5) and (1) of the Act.

Subsequently, the Respondents and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 7 on October 12, 2011. Among other things, the settlement agreement required the Respondents to (1) furnish the Union the information it requested on December 14, 2010, and items 68, 1214, 1619 of the information it requested on March 21, 2011; (2) upon request, rescind the changes to unit employees' hours/shifts, wages, working hours, and payroll period, and restore the status quo ante; (3) reinstate health insurance for unit employees and restore the practice of paying the full premium for their health insurance, and make them whole for any losses; (4) make unit employees whole for the reduction in their wages that were unilaterally implemented; (5) make all unit employees whole for any losses suffered as the result of the unilateral changes to hours/shifts, and reduction in working hours; (6) upon request, bargain collectively and in good faith with the Union with respect to rates of pay, wages, hours of employment and other terms and conditions of employment; and (7) post appropriate notices.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the allegations found as appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated October 20, 2011, the Region sent the Respondents a conformed copy of the settlement agreement and advised them to take the steps necessary to comply with the agreement. By letter dated November 16, 2011, the compliance officer reminded the Respondents that their obligations to submit payments were overdue, and that the certification of posting and signed and dated notices were also overdue. By letter dated November 23, 2011, the Regional Director reminded the Respondents of their obligation to submit (a) four signed and dated notices to Employees identical to those posted in conspicuous places in and about their facilities, including all places where notices to employees are customarily posted; (b) probative evidence, including a Certification of Posting, that the above Notices have been posted as well as the date and the specific locations of the postings; and (c) payments to all of the discriminatees identified in the settlement agreement. In this letter, the Regional Director also warned the Respondents that their failure to comply within 14 days would result in the Regional Director setting aside the settlement agreement, reissuing the complaint, and filing a motion for default judgment. The Respondents failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, the Acting Regional Director reissued the complaint on January 19, 2012. On February 13, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on the same day, the Board issued an order transferring the proceeding to the Board and a Notice to

Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondents have failed to comply with the terms of the settlement agreement by failing to furnish the Union with requested information; failing to submit four signed and dated notices to employees identical to those posted in conspicuous places in and about their facilities, including all places where notices to employees are customarily posted; failing to submit probative evidence, including a certification of posting, that the above notices have been posted as well as the date and the specific locations of the postings; and failing to submit payments to all of the discriminatees identified in the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.[1] Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent New Link Ltd., a Michigan corporation, with an office and facility at 14531 Vaughn in Detroit, Michigan, has been engaged in providing personal care, housing, and transportation for mentally ill and impaired adults.

At all material times, Respondent Inn Site, Inc., a Michigan corporation with an office and facility at 6821 Sarena in Detroit, Michigan, has been engaged in providing personal care, housing, and transportation for mentally ill and impaired adults.

At all material times, Respondent Cherlayne, Inc., a Michigan corporation with an office and facility at 305 E. Grand Boulevard in Detroit, Michigan, has been engaged in providing personal care, housing, and transportation for mentally ill and impaired adults.

At all material times, Respondents New Link, Inn Site, and Cherlayne, collectively called Respondent Homes, have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises.

Based on its operations described above, Respondent Homes constitutes a single-integrated business enterprise and a single employer within the meaning of the Act.

At all material times, Respondent Detroit Center for Care, LLC (DCC), a Michigan corporation with an office and facility at 30729 Greenfield Road in Southfield, Michigan, has been engaged in the business of providing management and/or consulting services for facilities in the health care industry, including adult foster care homes.

At all material times, Respondent Homes and Respondent DCC have been parties to a contract entitled Lease Management Agreement, which provides, in part, that Respondent DCC is responsible for the management and control, including the day-to-day operations, of Respondent Homes.

At all material times, Respondent DCC has possessed and exercised control over the labor relations policy of Respondent Homes for the employees of Respondent Homes.

At all material times, Respondent Homes and Respondent DCC have been joint employers of the employees of Respondent Homes.

During calendar year 2010, a representative period, Respondent Homes, in conducting its business operations described above, collectively derived gross revenues in excess of $500,000 and purchased services valued in excess of $30,000 from public utilities, including DTE Energy Co., which entities are directly engaged in interstate commerce.

Since commencing operation on about November 12, 2010, Respondent DCC, in conducting its business operations described above, provided services valued in excess of $50,000 to Respondent Homes, an enterprise directly engaged in interstate commerce located within the State of Michigan.

We find that each of the Respondents is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondents within the meaning of Section 2(11) of the Act and agents of the Respondents within the meaning of Section 2(13) of the Act:

[1] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

Cedell Murff	Owner/President of Respondent Homes
Richard Bryant	Owner/President of DCC
Renauld Williams	Owner DCC
Kathy Johnson	Administrator for Respondent Homes

At all material times, Charles Murff has been an agent of Respondent Homes within the meaning of Section 2(13) of the Act.

At all material times, Respondent DCC has been an agent of Respondent Homes within the meaning of Section 2(13) of the Act.

The following employees, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time direct care workers employed by Respondent Homes at its facilities located at New Link Ltd., 14531 Vaughan, Detroit, Michigan; Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan; and Inn Site, Inc., 6821 Sarena, Detroit, Michigan; but excluding guards and supervisors as defined in the Act.

On March 8, 2004, the Union was certified in Case 7–RC–22601 as the exclusive collective-bargaining representative of the unit.

At all material times, the Union has been recognized by Respondent Homes as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a 3-year bargaining agreement, which is effective by its terms from December 31, 2008, to 2011.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondents engaged in the following conduct:

1. (a) On about December 14, 2010, the Union requested, in writing, that the Respondents furnish it with the following information: (1) a copy of the current budget for 20092010; (2) the current seniority list; (3) salaries of all employees; and (4) copies of health care, dental and vision plans.

(b) On about March 21, 2011, the Union requested, in writing, that the Respondents furnish it with the information set forth in Attachment A to the complaint.

2. The information requested by the Union as described in paragraph 1(a) above, and in items 6, 7, 8, 12, 13, 14, 16, 17, 18, and 19 of complaint attachment A is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

3. (a) Since about December 14, 2010, the Respondents have failed and refused to furnish and/or unreasonably delayed in furnishing the Union with the information described in paragraph 1(a) above.

(b) Since about March 21, 2011, the Respondents:

(i) have failed and refused to furnish and/or unreasonably delayed in furnishing the Union with portions of the information set forth in complaint Attachment A, items 6, 7, 8, 12, 13, 14, 16, 17, 18, and 19; and

(ii) have failed to respond to the request for information described in complaint Attachment A, items 1-5, 9-11, and 15.

4. On about December 6, 2010, the Respondents unilaterally changed the hours/shifts of unit employees.

5. In about December 2010, the Respondents unilaterally reduced the wages of certain unit employees.

6. In about January 2011, the Respondents unilaterally cancelled the health insurance of unit employees.

7. On about March 22, 2011, the Respondents unilaterally reduced the working hours of unit employees.

8. In about April 2011, the Respondents unilaterally changed the payroll period for unit employees from biweekly to bimonthly.

9. The subjects set forth in paragraphs 48 above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

10. The Respondents engaged in the conduct set forth in paragraphs 48 above without affording the Union prior notice and a meaningful opportunity to bargain about these changes and their effects on the unit.

11. (a) On January 20, 2011, and June 8, 2011, the Respondents and the Union met for the purposes of negotiating a successor collective-bargaining agreement to the 20082011 agreement described above.

(b) During the period of January 21, 2011, through June 7, 2011, the Respondents refused to meet with the Union, refused to provide certain requested information and/or delayed in providing said requested information described in par. 1 above, and refused to recognize the Union as the exclusive collective-bargaining representative of the unit.

(c) By their overall conduct, including the conduct described in par. 11(b) above the Respondents have failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit.

12. (a) From about January 21, 2011, to June 7, 2011, the Respondents refused to recognize or bargain with the

Union as the exclusive collective-bargaining representative of the unit.

(b) By their overall conduct, including the conduct described in par. 11(b) above, the Respondents tacitly withdrew recognition of the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act. The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5)and (1) by withdrawing recognition from the Union, and by failing and refusing, since about January 21, 2011, through June 7, 2011, to recognize and bargain with the Union, we shall order the Respondents to bargain with the Union with respect to wages, hours, and other terms and conditions of employment and if an understanding is reached to embody the understanding in a signed agreement.

In addition, having found that the Respondents violated Section 8(a)(5) and (1) of the Act by unilaterally cancelling the unit employees' health insurance benefits, we shall order the Respondents to rescind this action, restore the unit employees' health insurance benefits until such time as the Respondents and the Union reach an agreement for a new collective-bargaining agreement or a lawful impasse based on good-faith negotiations, and jointly and severally reimburse unit employees for any expenses ensuing from the Respondents' unilateral changes to the health insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Further, having found that the Respondents violated Section 8(a)(5) and (1) by unilaterally: changing the hours/shifts of unit employees, reducing the wages of certain unit employees, reducing the working hours of unit employees, and changing the payroll period for unit employees from biweekly to bimonthly, we shall order the Respondents to rescind these unilateral changes and restore the status quo ante until such time as the Respondents and the Union reach an agreement for a new collective-bargaining agreement or a lawful impasse based on good-faith negotiations. In addition, we shall order the Respondents jointly and severally to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of these unlawful changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[2]

Finally, having found that the Respondents have violated Section 8(a)(5) and (1) by failing and refusing to provide to the Union a portion of the requested information that is necessary and relevant to its performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information not yet provided.[3]

ORDER

The National Labor Relations Board orders that the Respondents, New Link Ltd, Inn Site, Inc., Cherlayne, Inc., and Detroit Center for Care, LLC, Detroit, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL–CIO and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit. The bargaining unit is:

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[2] In the complaint, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondents be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc*., 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

[3] According to the uncontroverted allegations of the Acting General Counsel's motion, the only information that has not been received by the Union is the names, addresses, and phone numbers of unit members. Therefore, we shall order the Respondents to furnish the Union with that information.

All full-time and regular part-time direct care workers employed by Respondent Homes at its facilities located at New Link Ltd., 14531 Vaughan, Detroit, Michigan; Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan; and Inn Site, Inc., 6821 Sarena, Detroit, Michigan; but excluding guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with certain requested information and by unreasonably delaying in providing the Union with other requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees.

(c) Unilaterally cancelling the unit employees' health insurance without providing the Union prior notice and the opportunity to bargain.

(d) Unilaterally changing the hours/shifts of unit employees; reducing the wages of certain unit employees; reducing the working hours of unit employees; and changing the payroll period for unit employees from biweekly to bimonthly without providing the Union prior notice and the opportunity to bargain.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union in a timely manner the names, addresses and phone numbers of unit members that it requested on March 21, 2011.

(c) Rescind the unilateral cancellation of the employees' health insurance and restore the status quo that existed prior to the cancellation.

(d) Jointly and severally reimburse the unit employees for any expenses resulting from the unilateral cancellation of their health insurance, with interest, in the manner set forth in the remedy section of this decision.

(e) Rescind the unilateral change in the hours/shifts of unit employees; the unilateral reduction in the wages of certain unit employees; the unilateral reduction of the working hours of unit employees; and the unilateral change in the payroll period for unit employees from biweekly to bimonthly and restore the status quo that existed prior to the unilateral actions.

(f) Jointly and severally make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondents' unilateral changes, in the manner set forth in the remedy section of the decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at their facilities in Detroit, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[5] Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 6, 2010.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 6, 2012

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[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[5] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice. Member Flynn did not participate in *J. Picini Flooring* but recognizes it as extant precedent, which he applies for institutional reasons.

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Terence F. Flynn, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL–CIO (the Union) and fail and refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the unit. The bargaining unit is:

> All full-time and regular part-time direct care workers employed by us at our facilities located at New Link Ltd., 14531 Vaughan, Detroit, Michigan; Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan; and Inn Site, Inc., 6821 Sarena, Detroit, Michigan; but excluding guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with certain requested information and by unreasonably delaying in providing it with other requested information that is relevant and necessary to its role as your collective-bargaining representative.

WE WILL NOT unilaterally cancel your health insurance without providing the Union prior notice and the opportunity to bargain.

WE WILL NOT unilaterally change your hours/shifts; reduce your wages; reduce your working hours; and change your payroll period from biweekly to bimonthly without providing the Union prior notice and the opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as your exclusive collective-bargaining representative concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL provide the Union in a timely manner the names, addresses and phone numbers of unit members that it requested on March 21, 2011.

WE WILL rescind our unilateral cancellation of your health insurance and restore the status quo that existed prior to the cancellation.

WE WILL jointly and severally reimburse you for any expenses resulting from the unilateral cancellation of your health insurance, with interest.

WE WILL rescind our unilateral change in your hours/; the unilateral reduction in the wages of certain unit employees; the unilateral reduction of your working hours; and the unilateral change in your payroll period from biweekly to bimonthly and restore the status quo that existed prior to the unilateral actions.

WE WILL jointly and severally make you whole for any loss of earnings and other benefits suffered as a result of our unilateral changes, with interest.

NEW LINK LTD, INN SITE, INC., AND CHERLAYNE, INC. AND DETROIT CENTER FOR CARE, LLC